IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10792 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISTIYAKALI LIYAKATALI ANSARI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR UDAI R BHATT for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 05/12/2000

ORAL JUDGEMENT

1. The petitioner has filed this petition under Article 226 of the Constitution challenging his detention order passed by the Police Commissioner, Ahmedabad City

on 24th July, 2000 in exercise of powers conferred upon him under Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short) and the petitioner came to be detained from 25th July, 2000.

2. Grounds of detenton reveals that in all two offences, on 1st of June, 2000 and 7th of July,2000 under Sections 452, 394, 506(2), 399, 400, 401 and 402 of the Indian Penal Code and Sec.25(1)(B)(A) of the Arms Act came to be registered against the petitioner before the Dariyapur and Shahibaug Police Stations respectively. The detaining Authority took into consideration the investigation of the above said crimes registered against the petitioner and in addition to this, the statements of two witnesses who on assurance of anonymity offered their statements before the concerned authority that the petitioner was hardened criminal and was obstruction to public peace. From the above materials, the detaining authority came to the conclusion that the petitioner was a " dangerous person " within the meaning of Section 2(c) of the PASA Act. Hence, the impugned order was passed against the petitioner.

3. Learned Advocate Mr.H.R. Prajapati for the petitioner and learned Advocate Mr. Udai Bhatt for the respondents were heard.

4. Various grounds raised to challenge the detention order. It was urged that while the detention order was served upon the petitioner, he was in judicial custody in the above said offence. He had not preferred any bail application so far. However, the detaining authority observed that the petitioner was likely to get the bail and was likely to continue the illegal activities again. It is urged that Detaining Authority wrongly considered the provision under Section 473(5) of the Criminal Procedure Code. It is urged that on this ground alone, non-application of mind on the part of the detaining authority is obvious and the order of detention is vitiated.

5. While scrutinising the records and considering the rival contentions it appears that at the time of serving the detention order, the petitioner was in judicial custody in the offence registered against him. Therefore, till the date of passing of the order, the petitioner was incapable of continuing his illegal activities and this fact has not been considered by the

detaining authority. Secondly, the detaining authority has anticipated that the petitioner was likely to be released on bail and thereafter he was likely to indulge in illegal activities. The detaining authority further observed in the grounds that the petitioner was required to be detained to prevent him from indulging in anti social activities, which was obstruction to public order. It was further observed by the detaining authority that under the provision of Section 437 (5) of the Cr.P.C. for the cancellation of bail, was likely to take time and, therefore, that was not considered the proper remedy by the detaining authority.

6. However, from the above observations of the detaining authority in the ground of detention, non-application of mind is obvious. It vitiates not only the detention order of the detaining authority and further the detention of the detenu is also vitiated. Firstly, when the petitioner was in judicial custody there was no likelihood of his continuing the illegal activities which was obstruction to public order. The detaining authority failed to consider this aspect. Secondly, the detaining authority unnecessarily anticipated that the petitioner will be released on bail. Further, detaining authority also unnecessarily anticipated that the procedure for the cancellation of bail was likely to take time and this observation is made without resorting to less drastic remedy available to the detaining authority. The detaining authority simply brushed aside the same by saying that the same was likely to take time. In his view of the matter, the order passed by the detaining authority is vitiated and is required to be quashed and set aside.

6. In view of the above discussion, this petition is allowed. The order passed by the Police Commissioner, Ahmedabad City on 24th July, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Istiyakali Liyakatali Ansari is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair